

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

**CLARIFICATION OF GREAT PLAINS COMMUNICATIONS PETITION FOR  
WAIVER OF 47 C.F.R. § 51.909(a)(4) and 47 C.F.R. § 51.917**

Great Plains Communications (“Great Plains” or the “Company”) respectfully submits this filing to clarify that although its June 21, 2017 Petition requested waiver of both 47 C.F.R. § 51.909(a)(4) and 47 C.F.R. § 51.917,<sup>1</sup> the Federal Communications Commission (“Commission”) could grant the requested relief by only waiving the provision in 51.909(a)(4) that permits switched access rates to increase when entities leave the National Exchange Carrier Association (“NECA”) switched access pool. Great Plains’ waiver is aimed at addressing an unintended consequence of a rule adopted by the Wireline Competition Bureau (“Bureau”) that allows rates to increase when a carrier exits the NECA switched access pool. As calculated by NECA, the rule results in an approximately 150 percent increase in the Company’s switched access rates—a result that in no way benefits Great Plains due to the cap on total intercarrier compensation (“ICC”) recovery—but will lead to significant disruption and harm to the

---

<sup>1</sup> See Petition of Great Plains Communications for Waiver of 47 C.F.R. § 51.909(a)(4)(ii)(A) and 47 C.F.R. § 51.919(b), WC Docket No. 10-90, CC Docket No. 01-92 (June 21, 2017) (Petition). In its Petition, Great Plains mistakenly requested a waiver from 47 C.F.R. § 51.919(b) but intended to request a waiver from 47 C.F.R. § 51.917. In this clarification, Great Plains explains that the Commission could grant its requested relief without using actual revenues, so waiver of § 51.917 may not be necessary but is included out of an abundance of caution. Great Plains also clarifies that it seeks a waiver of the section 47 C.F.R. § 51.909(a)(4), rather than just § 51.909(a)(4)(ii)(A), to the extent necessary to effectuate the requested relief.

Commission's ICC and rural call completion goals. In this clarification, Great Plains explains that the Commission can address this problem by simply waiving the rule that allows carriers' switched access rates to increase upon leaving the NECA pool. This approach is consistent with the goals of the *NECA Pooling Order*, as carriers can continue to enter or exit the pool.<sup>2</sup> As a result, Great Plains' switched access rates would be capped at their June 30, 2017 levels. Given the unique magnitude of the rate increase at issue and the public interest harms it would cause, good cause exists to grant the requested waiver.

## **BACKGROUND**

In 2011, the Commission comprehensively reformed the ICC system by requiring carriers to adjust, over a period of years, many of the legacy switched access charges with the ultimate goal of transition to a bill-and-keep regime.<sup>3</sup> The Commission focused its ICC reforms on "reducing terminating switched access rates" and adopting a "gradual, measured transition that will facilitate predictability and stability."<sup>4</sup> In furtherance of these goals, the *USF/ICC Transformation Order*, among other things, capped all interstate switched access rates, including originating access and all transport rates, for rate-of-return carriers that were in effect on December 29, 2011.<sup>5</sup> This rate cap ensured that carriers' interstate switched access rates could not increase above their 2011 levels.

In 2013, the Bureau issued the *NECA Pooling Order*, which amended the Part 51 rules to include a methodology for NECA to use when carriers enter or exit the NECA traffic-sensitive

---

<sup>2</sup> See *In re Connect America Fund*, Order, 28 FCC Rcd 3319, 3324-25 ¶ 11 (WCB 2013) ("*NECA Pooling Order*") ("These rule revisions effectuate the Commission's intent that NECA pooling remain available during the transition, consistent with its historical operation." *Id.* at 3326 ¶ 14.).

<sup>3</sup> *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,904 ¶ 736 (2011) ("*USF/ICC Transformation Order*").

<sup>4</sup> *Id.* at 17,676-77 ¶ 35.

<sup>5</sup> *Id.* at 17,933-34 ¶¶ 800-801; 47 C.F.R. § 51.909(a).

tariff pool.<sup>6</sup> While the Bureau stated that the revisions implemented the Commission’s “intent that NECA pooling remain available during the transition,”<sup>7</sup> the decision inadvertently undermined the Commission’s entire 2011 reforms by waiving the *USF/ICC Transformation Order*’s cap on switched access rates and making it possible for such rates to *increase*.<sup>8</sup> In effect, the Bureau, on delegated authority, rewrote a key aspect of the Commission’s reforms in the *USF/ICC Transformation Order*.<sup>9</sup>

In December 2014, the Commission adopted the Alternative Connect America Cost Model (“A-CAM”), offering rate-of-return carriers the ability to receive high-cost universal service support calculated by a model in exchange for deploying broadband-capable networks to locations for the first time.<sup>10</sup> Carriers had until November 1, 2016 to indicate whether they elected to receive model-based support.<sup>11</sup> Carriers that elect model support are required to leave the NECA common line pool.<sup>12</sup>

Great Plains elected the A-CAM model option for receiving high-cost universal service support to deploy additional broadband services across the Company’s service area and connect thousands of unserved locations with broadband for the first time. On March 1, 2017, Great Plains informed NECA that in addition to exiting the NECA common line pool, as required for

---

<sup>6</sup> See *NECA Pooling Order*, 28 FCC Rcd at 3319.

<sup>7</sup> *Id.* at 3326 ¶ 14.

<sup>8</sup> See *USF/ICC Transformation Order*, at 17,933-34 ¶ 800.

<sup>9</sup> See *id.*

<sup>10</sup> See *Wireline Competition Bureau Announces Availability of Version 4.2 of the Connect America Phase II Cost Model and the First Version of an Alternative Cost Model Being Developed for Potential Use in Rate-of-Return Areas*, Public Notice, 29 FCC Rcd 16,157 (WCB 2014) (“2014 Public Notice”).

<sup>11</sup> See *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8641 (WCB 2016).

<sup>12</sup> See *In re Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3160 ¶ 195 (2016) (“A-CAM Order”).

all carriers that elected the A-CAM model,<sup>13</sup> it would also be exiting the NECA tariff for switched and special access.

When carriers leave the pool, the rule adopted by the Bureau in 2013 instructs NECA to “determine the amount by which each exiting Rate-of-Return Carrier is a net contributor or net recipient to or from the switched access segment of the Association pool.”<sup>14</sup> According to NECA, doing so resulted in a nearly 150 percent increase in Great Plains’ then-existing switched access rates. This increase is irrelevant to Great Plains’ ultimate revenues, since its total recovery is capped.<sup>15</sup>

Great Plains filed its Petition for waiver with the Commission on June 21, 2017,<sup>16</sup> and the Bureau issued a Public Notice seeking comment on the initial petition on June 30, 2017.<sup>17</sup> Great Plains seeks a wavier to avoid the disruption such a rate increase would cause. Great Plains takes this opportunity to clarify that an increase would undermine the transition to bill-and-keep, is contrary to the intent of the *USF/ICC Transformation Order*, could exacerbate rural call completion problems for consumers in businesses in Great Plains’ service area, and could result in rate increase for consumers. Such result is unquestionably counter to the public interest.

---

<sup>13</sup> See *In re Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3159-60 ¶¶ 194-196 (2016) (requiring A-CAM funding recipients to exit the NECA common line pool).

<sup>14</sup> 47 C.F.R. § 51.909(a)(4)(ii).

<sup>15</sup> Under the Commission’s rules, a rate-of-return carrier’s total eligible recovery has three components: rates from other carriers, Access Recovery Charges (“ARCs”), and recovery from the Connect America Fund (“CAF”) ICC Universal Service Fund (“USF”). The percentage that each item contributes to the total recovery may change, but the total recovery that a provider is eligible to collect does not. See 47 C.F.R. § 51.917.

<sup>16</sup> Initial Petition.

<sup>17</sup> *Wireline Competition Bureau Seeks Comment on Petition for Waiver from Great Plains Communications*, WC Docket No. 10-90, Public Notice, DA 17-640 (rel. June 30, 2017). Comments are due on July 31, 2017, and Reply Comments are due on August 15, 2017.

## ARGUMENT

Section 1.3 of the Commission's rules permits the Commission to grant a waiver for good cause shown, and the Commission should grant a waiver if, after considering all relevant factors, a waiver is in the public interest.<sup>18</sup> Among other things, a waiver is appropriate where "unique or unusual factual circumstances" mandate a waiver to avoid an application of the rule that would be "inequitable, unduly burdensome or contrary to the public interest."<sup>19</sup> Here, a waiver is appropriate in these unique circumstances to avoid an unduly burdensome 150 percent increase that would thwart multiple Commission goals and harm the public interest. Moreover, grant of the waiver is consistent with the intent of the rule.

### **I. Special Circumstances Exist That Warrant A Deviation From The General Rule.**

The rate increase at issue here is without question unique and could not have been contemplated when the relevant rules were issued.<sup>20</sup> When the Bureau adopted the *NECA Pooling Order* in 2013, the Commission had not proposed, let alone adopted, an incentive regulation framework for rate-of-return carriers to receive high cost universal service support. A-CAM, first released in December 2014, promotes the Commission's long-standing goals of moving providers to incentive regulation. Indeed, the Commission has long recognized incentive regulation as its preferred method of regulation.<sup>21</sup> Incentive-based policies encourage providers to transition to technologies and programs that maximize the value of scarce program resources.<sup>22</sup> These policies also give providers better incentives to operate efficiently and

---

<sup>18</sup> 47 C.F.R. § 1.3; *In re Rath Microtech Complaint Regarding Electronic Micro Sys., Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 16,710, 16,714 ¶ 15 (2001).

<sup>19</sup> 47 C.F.R. § 1.925(b)(3)(i)-(ii).

<sup>20</sup> See Petition at 5.

<sup>21</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17,667 ¶ 1.

<sup>22</sup> *Id.* at 17,670-71 ¶ 11.

achieve policy goals that the Commission sets.<sup>23</sup> Most importantly, incentive regulation ultimately benefits consumers.<sup>24</sup>

A-CAM requires rate-of-return carriers electing support to leave the NECA common line pool.<sup>25</sup> Once leaving the common line pool, it made sense for Great Plains to exit the other pools as well, particularly given that Great Plains' special access rates have been increasing and such increases were making the Company less competitive. Yet when the Bureau in 2013 amended section 51.909(a) to establish a mechanism to allow switched access rate caps to increase upon leaving the NECA pools,<sup>26</sup> it could not have predicted the implications of its decisions on a later enacted A-CAM program. The result in this case is a patently absurd rate increase that benefits no one. And, as discussed below, such a rate increase is contrary to the public interest.

## **II. Application Of The Rule Would Be Burdensome And Contrary To The Public Interest.**

Absent a grant of the waiver, application of the Bureau's NECA pool rule will cause significant burdens and harm the public interest. Specifically, such a dramatic increase in Great Plains' switched access rates harms the Commission's ICC goals and may give intermediate and long distance providers a greater incentive to use network routing practices that result in blocked or uncompleted calls to rural customers in Nebraska, and could also result in higher rates for consumers and businesses.

---

<sup>23</sup> See *id.* at 17,709 ¶ 117.

<sup>24</sup> *Id.* at 17,670-71 ¶ 11.

<sup>25</sup> See *A-CAM Order*, 31 FCC Rcd at 3161 ¶ 195.

<sup>26</sup> *NECA Pooling Order*, 28 FCC Rcd at 3324-25 ¶ 11.

**A. The Rate Increase Contradicts The Policy Of The *USF/ICC Transformation Order*.**

As discussed above, the *USF/ICC Transformation Order* reformed the ICC system with the goal of bringing all terminating access charges to a bill-and-keep methodology and facilitating predictability and stability with respect to ICC revenues.<sup>27</sup> To implement the transition to bill-and-keep, the Commission capped all interstate switched access rates, including originating access and all transport rates, for rate-of-return carriers that were in effect on December 29, 2011.<sup>28</sup> In adopting the cap, the Commission explained that “[a]bsent such action ... rates to interconnecting carriers could continue to increase as they have been in the past years, which is counter to the reform we adopt today.”<sup>29</sup> Allowing an approximately 150 percent rate increase to go into effect runs directly contrary to these goals.<sup>30</sup>

**B. The Rate Increase At Issue Would Harm The Commission’s Rural Call Completion Goals.**

The Commission has noted that unacceptable performance with respect to rural call completion “causes rural businesses to lose customers, cuts families off from their relatives in rural areas, and creates potential for dangerous delays in public safety communications in rural areas.”<sup>31</sup> In 2013, the Commission adopted rules to address these significant concerns.<sup>32</sup> More recently, the Commission proposed new rules to more effectively address rural call completion problems while reducing burdens on covered providers.<sup>33</sup>

---

<sup>27</sup> See *supra* note 2.

<sup>28</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17,933-34 ¶¶ 800-801; 47 C.F.R. § 51.909(a).

<sup>29</sup> *USF/ICC Transformation Order*, at 17,933 ¶ 800.

<sup>30</sup> See also Petition at 5.

<sup>31</sup> *In re Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569, 1570 ¶ 2 (2013).

<sup>32</sup> *In re Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16,154 (2013) (“*2013 Rural Call Completion Order*”).

<sup>33</sup> See *In re Rural Call Completion*, Second Further Notice of Proposed Rulemaking, WC Docket No. 13-39, FCC 17-92 (rel. July 14, 2017).

The Commission has explained that one potential cause of the call completion problems in rural areas is that calls to rural areas are often handled by numerous providers in the call's path and, "[g]iven the particularly high rates long-distance providers incur to terminate long-distance calls to rural rate-of-return carriers, long-distance providers have additional incentives to reduce the per-minute cost of calls."<sup>34</sup> As a result, there is greater incentive for the long-distance provider to hand off the call to an intermediate provider that is offering to deliver it cheaply, and potentially less incentive to ensure that the calls are actually completed.<sup>35</sup> According to the Commission, "[t]he prevalence of these problems accords with providers' incentives to engage in blocking or degrading traffic...in an effort to minimize their intercarrier compensation payments."<sup>36</sup>

A nearly 150 percent increase in Great Plains' switched access rates would exacerbate these problems by creating an even greater incentive for providers to use network routing practices that result in blocked or uncompleted calls.<sup>37</sup> Such a result is directly contrary to the Commission's rural call completion policies and would cause unnecessary burdens to the people of Nebraska.

**C. The Requested Waiver Will Avoid Significant Consumer Rate Increases.**

Switched access rates are also directly related to the price consumers pay for long-distance telephone service. In the *USF/ICC Transformation Order*, the Commission estimated consumer benefits of reducing rates to a bill-and-keep framework. The Commission estimated that when ICC rates decrease, local carriers that purchase wholesale long distance service from

---

<sup>34</sup> 2013 Rural Call Completion Order, 28 FCC Rcd at 16,163 ¶ 17 (footnote omitted).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See Petition at 6.



an unaffiliated provider realize 100 percent pass through of the ICC savings.<sup>38</sup> Staff further estimated that consumer rates would decrease by a magnitude of 50-75 percent. By this logic, when ICC rates increase, wholesale long distance rates and consumers' rates will also increase. Great Plains' residential customers already pay an average of \$30.00 a month for local phone service (including surcharges) plus on average about \$12 a month for long distance service, and a dramatic rate increase would likely be unaffordable for many rural consumers. Indeed, the Commission recently expressed concern that even a \$2 increase in local rates "would have a significant impact on consumers, particularly in rural areas," and took action to freeze the rate floor.<sup>39</sup> The requested waiver will ensure that Great Plains' switched access rates do not increase, and thus will keep the rates for Great Plains' customers stable.

Moreover, grant of the requested waiver will fulfill the goals of the Commission's recent reforms in the business data services proceeding, which, among other things, facilitates "lower rates paid by the public for the affected services."<sup>40</sup> Business data services are significant to both the economy and to businesses of all sizes, as they enable the secure and reliable transfer of data.<sup>41</sup> Under the NECA pool, Great Plains' business data services rates increased by 16.55 percent in 2016 and by an average of 7.6 percent over the past four years, making Great Plains less competitive and services less affordable to Great Plains' business customers. By leaving the NECA pool, Great Plains can provide more competitive rates to consumers and small businesses.

---

<sup>38</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 18,297-98 ¶¶ 7-8.

<sup>39</sup> *In re Connect America Fund*, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 4509, 4515 ¶ 16 (2017).

<sup>40</sup> *In re Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3641 Appendix C ¶ 63 (2017).

<sup>41</sup> See *id.* at ¶ 6.

**D. The Waiver Is Consistent With The Intent Of The Rule.**

The Bureau adopted section 51.909(a)(4) to “effectuate the Commission’s intent that NECA pooling remain available during the transition, consistent with its historical operation.”<sup>42</sup> The waiver will continue to allow carriers to enter and exit the NECA pool as carriers have been doing for decades.

**CONCLUSION**

Great Plains respectfully requests that the Commission grant its requested waiver for the foregoing reasons, and either allow Great Plains to utilize actual revenues in establishing switched access rates as reflected in its Petition, or cap Great Plains’ switched access rates at their June 30, 2017 levels as described above.

Respectfully submitted,

*/s/ Rebekah P. Goodheart*

Rebekah P. Goodheart  
Christine N. Sanquist  
JENNER & BLOCK LLP  
1099 New York Avenue, NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000

*Counsel for Great Plains Communications*

July 27, 2017

---

<sup>42</sup> *NECA Pooling Order*, 28 FCC Rcd at 3326 ¶ 14.